IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.Rev.Pet.No. 792 of 2000()

CRA.244/1994 of SESSIONS COURT, MANJERI
CC.311/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PERINTHALMANNA

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REVN. PETITIONER:

P.MUSTHAFA ALIAS KARAPPAN,
SON OF MOIDU,
PURAMTHOTTATHIL HOUSE,
P.O.PATHAIKKARA,
VIA PERINTHALMANNA,
MALAPPURAM DISTRICT.

BY ADV. SMT.PREETHY KARUNAKARAN
SRI.R.RAJESH KORMATH
SRI.ANISH S.AMBADY
SMT.BIJIMOL JOSE

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
PERINTHALMANNA.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.4208/2000 IN CRL.R.P.NO.792/2000

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

27/09/2007

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K.R.UDAYABHANU, J.

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Crl.R.P.No.792/2000-B

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Dated this the 27th day of September, 2007

O R D E R

The revision petitioner is the first accused who stands convicted for the offence under Section 379 read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of two years. He was charge sheeted for the offences under Sections 457 and 380 read with Section 34 I.P.C. The appellate court acquitted the accused for the offences under Sections 457 and 380 I.P.C and converted the conviction from Sections 457 and 380 I.P.C to Section 379 read with Section 34 I.P.C.

2. The prosecution case is that on 02/03/1993 at about 5 a.m., the accused, two in number, in furtherance of common intention committed theft from van bearing No.TCD.1090 parked on the eastern road margin of Perinthalmanna-Pattambi public road. The first accused opened the door of the van and took the suitcase containing currency notes amounting to Rs.39,000/- which belonged to PW.2, the collection agent of M/s.Raghav Appliances, Palakkad, and thereby committed theft.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 14, Exts.P1 to P11 and MOs.1 to 12.

4. The accused was arrested on the same day in the evening at 5.30 p.m and the cash stolen was recovered on the basis of Section 27 confession. The evidence adduced also consisted of the report of the finger print expert.

5. The counsel for the revision petitioner has only pleaded for modification of the sentence pointing out that the incident has taken place in March 1993 and about 15 years have elapsed since the commencement of the proceedings and that at that time of the incident, the first accused was aged only 25 years and that right now he is well settled in life and that he has not committed any offence prior to or subsequent to the incident involved.

In the circumstances and considering the long delay of the matter, I find that directing the accused to be imprisoned will not be appropriate. In the circumstances, the sentence imposed for the offence under Section 379 read with Section 34 I.P.C is modified to imprisonment till the rising of the court and to pay a fine of rupees

five thousand and in default to undergo simple imprisonment for six months. The accused shall appear before the Judicial Magistrate of the First Class-I, Perinthalmanna, on 24/10/2007 to receive the sentence. The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.792/2000-B

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O R D E R

27th September, 2007